IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

MONDAY, THE 19TH FEBRUARY 2007 / 30TH MAGHA 1928

WP(C).No. 4160 of 2007(T)

PETITIONER:

M/S. WIPRO LIMITED,
N.A.28 THATTANCHAVADY INDUSTRIAL ESTATE,
PONDICHERRY-605009, REPRESENTED BY ITS
OPERATIONS MANAGER, KERALA, MR.BHASURANGAN K.

BY ADV. SRI.JOSEPH MARKOSE
SRI.MITHUN MARKOS

RESPONDENTS:

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1. THE STATE OF KERALA,
REPRESENTED BY SECRETARY TO THE MINISTER OF
FINANCE, GOVERNMENT SECRETARIAT, TRIVANDRUM.

2. THE COMMISSIONER OF COMMERCIAL TAXES,
TRIVANDRUM.

3. COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECK POST, VELANTHAVALAM.

4. ASSISTANT COMMISSIONER (ASSMT.),
KVAT SPECIAL CIRCLE, ERNAKULAM.

5. ASSISTANT COMMISSIONER (ASSMT.),
KVAT SPECIAL CIRCLE, KANNUR.

6. THE SYNDICATE BANK LTD.,
REGIONAL OFFICE, FORT ROAD, KANNUR.

BY GOVT. PLEADER SRI.MOHAMMED RAFIQ – R1 TO R5

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX (WPC 4160/2007)

PETITIONER'S EXTS.

EXT.P1 - TRUE COPY OF PURCHASE ORDER DATED 12.12.2006 FROM THE 5TH RESPONDENT.

EXT.P2(a) – TRUE COPY OF WAY BILL NO.50043441991DATED 8.1.2007 OF BLUE DART EXPRESS.

EXT.P2(b) – TRUE COPY OF WAY BILL NO.50043441980 DATED 8.1.2007 OF BLUE DART EXPRESS.

EXT.P2(c) - TRUE COPY OF WAY BILL NO.50043441976 DATED 8-1-2007 OF BLUE DART EXPRESS.

EXT.P2(d) – TRUE COPY OF WAY BILL NO.50043441965 DATED 8.1.2007 OF BLUE DART EXPRESS.

EXT.P2(e) - TRUE COPY OF WAY BILL NO.50043441954 DATED 8.1.2007 OF BLUE DART EXPRESS.

EXT.P2(f) - TRUE COPY OF WAY BILL NO.50043441943 DATED 8.1.2007 OF BLUE DART EXPRESS.

EXT.P2(g) – TRUE COPY OF WAY BILL NO.50043441932 DATED 8.1.2007 OF BLUE DART EXPRESS.

EXT.P2(h) – TRUE COPY OF WAY BILL NO.500431921 DATED 8.1.2007 OF BLUE DART EXPRESS.

EXT.P2(i) – TRUE COPY OF WAY BILL NO.50043441910 DATED 8.1.2007 OF BLUE DART EXPRESS.

EXT.P2(j) – TRUE COPY OF WAY BILL NO.50043441906 DATED 8.1.2007 OF BLUE DART EXPRESS.

EXT.P2(k) – TRUE COPY OF WAY BILL NO.50043441895 DATED 8.1.2007 OF BLUE DART EXPRESS.

EXT.P2(l) – TRUE COPY OF WAY BILL NO.50043441884 DATED 8.1.2007 OF BLUE DART EXPRESS.

EXT.P3(a) – TRUE COPY OF INVOICE NO.6009204492 DATED 8.1.2007.

EXT.P3(b) – TRUE COPY OF INVOICE NO.6009204493 DATED 8.1.2007.

EXT.P3(c) – TRUE COPY OF INVOICE NO.6009204494 DATED 8.1.2007.

EXT.P3(d) – TRUE COPY OF INVOICE NO.6009204495 DATED 8.1.2007.

EXT.P3(e) – TRUE COPY OF INVOICE NO.6009204496 DATED 8.1.2007.

EXT.P3(f) – TRUE COPY OF INVOICE NO.6009204497 DATED 8.1.2007.

EXT.P3(g) – TRUE COPY OF INVOICE NO.6009204498 DATED 8.1.2007.

EXT.P3(h) – TRUE COPY OF INVOICE NO.6009204499 DATED 8.1.2007.

EXT.P3(i) – TRUE COPY OF INVOICE NO.6009204500 DATED 8.1.2007.

EXT.P3(j) – TRUE COPY OF INVOICE NO.6009204501 DATED 8.1.2007.

EXT.P3(k) – TRUE COPY OF INVOICE NO.6009204502 DATED 8.1.2007.

EXT.P3(l) – TRUE COPY OF INVOICE NO.6009204503 DATED 8.1.2007.

EXT.P4 – TRUE COPY OF NOTICE DATED 4.2.2007 OF THE 3RD RESPONDENT.

EXT.P5 – TRUE COPY OF CIRCULAR NO.51/2006 DATED 19.12.2006 ISSUED BY THE 2ND RESPONDENT.

EXT.P6 – TRUE COPY OF CIRCULAR NO.50/2006 DATED 19.12.2006 ISSUED BY THE 2ND RESPONDENT.

/TRUE COPY/

K.BALAKRISHNAN NAIR, J.

W.P.(C) NO. 4160 OF 2007-T

JUDGMENT

The petitioner challenges Ext.P4 notice issued under Section 47(2) of the Kerala Value Added Tax Act, in respect of a consignment of computer systems sent by it to the 6th respondent Sydicate Bank, Kannur. It has been called upon to furnish security for the alleged irregularity of non-production of ownership certificate in Form No.16. According to the petitioner, Form No.16 is not necessary, as the goods covered by the consignment are sold to the consignee.

2. I heard the learned Government Pleader for the respondents also. Form No.16 is prescribed in Rule 58(18) of the K.V.A.T Rules, 2005. The said sub-rule reads as follows:

> "58. Maintenance and preservation of accounts:
> (1) .....
>
> (18) Every person, other than a registered dealer, who consigns goods by any vehicle or vessel, where the transport is not in pursuance of a sale, shall issue a certificate of ownership in Form No.16."

A reading of the above Rule would show that the same will not apply to the facts of this case. In this case, M/s.Wipro Ltd., is consigning computer

systems to the Syndicate Bank, Kannur. If the transport is not pursuant to a sale, Form No.16 is necessary. In this case, the transport is pursuant to a sale in favour of the Syndicate Bank, made by the petitioner. Therefore, the defect noticed in Ext.P4 is no defect at all. If the petitioner produces the purchase order issued by the consignee for the goods covered by Ext.P4 notice, further proceedings pursuant to the said notice shall be dropped. In other words, the release of the goods as per the interim order of this Court dated 7.2.2007 shall be treated as regular. The bond executed by the petitioner shall be discharged.

The Writ Petition is disposed of as above.

19th February, 2007. K.BALAKRISHNAN NAIR, JUDGE.

Nm/